Background Checks: Understanding the Fair Credit Reporting Act (FCRA)
By Katie Hartley, Accurate Background, Inc.

For many human resource professionals and business owners, the Fair Credit Reporting Act (FCRA) and what it means for their organization can be confusing. At the very basic level, the FCRA is the federal law that governs any information provided by a consumer reporting agency (CRA). A CRA is defined as any entity that assembles reports on individuals for other businesses - such as your background screening provider. The FCRA, enacted in 1970, provides important protections for credit reports, consumer investigative reports, and employment background checks.

Bottom line, the FCRA is there to protect the job applicant (consumer) as well as your organization. If you are conducting background checks on your job applicants and you are using a third party background screening provider – you are required to be compliant with the FCRA.

The cost of non-compliance can add up quickly. Job applicants may seek a maximum of $1000 in statutory damages in addition to actual damages, punitive damages and reasonable attorney fees for willful noncompliance with the Act.

Your background screening provider should supply the necessary tools and education regarding the FCRA to enable your organization to maintain compliance with this important legislation. The key to ensuring compliance and understanding the requirements under the FCRA is following these basic steps:

**Step One: Permissible Purpose**
To start, your organization must have a “Permissible Purpose” for running the background check as defined under Section 604 of the FCRA. The defined permissible purposes include, but are not limited to, Employment purposes.

**Step Two: Disclosure & Authorization**
Disclosure and authorization is a required step under the FCRA. The Disclosure and Authorization form is the documentation used to obtain the applicant’s signed authorization for the background check. This step is required before initiating a background check on any individual.

The applicant must receive the following documents before a background check can be conducted:
- Background Disclosure and Authorization (“D&A”) form (signed and returned by applicant)
- Summary of Rights Under the FCRA

The signed Disclosure and Authorization form, regardless of your hiring decision, should be kept on file for a minimum of 5 years as allowed under the federal statute of limitations for civil filings of non-compliance.

If employment is denied (in whole or in part) based on the results of the background check, the following steps are required:

**Step Three: Pre-Adverse Action Notification**
A Pre-Adverse Action letter must be sent to the applicant. With this letter, a copy of the completed background check report as well as the Summary of Consumer Rights under the FCRA must be included. Information regarding the hiring decision cannot be disclosed in this notification.

**Step Four: Adverse Action Notification**

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**Did You Know?**
- The FCRA applies to all background screening, not just screening which includes credit reports.
- An employer must always disclose and obtain written authorization prior to the background investigation (unless it is a case of suspected wrong doing).
- Many accurate background checks cannot be done instantly. Record searches at county courts must often be done in person to obtain current information.
- Under the FACT Act, if an applicant or employee expresses any concern they may be a victim of identity theft, the background screening provider and/or your organization must provide them with the FDIC document titled, “Remedying the Effects of Identity Theft”.
- Initial Notice is an optional step under the FCRA which can be used to notify employees and applicants that the employer conducts background screening. Methods for Initial Notice include: a) Signs in the HR Department, b) Statement on the company website, job postings, etc.
Following the Pre-Adverse Action letter, an Adverse Action notification must be sent to the applicant. The final decision to deny employment based on the results of the background check is disclosed in this notification. With this letter, you must include a copy of the completed background check report as well as the Summary of Consumer Rights under the FCRA.

Pre-Adverse and Adverse Action letters give the applicant the opportunity to dispute information provided in their report that they believe is erroneous. These steps were designed to protect applicants from mistakes stemming from human error, mistaken identity, outdated information, etc. Both of these letters must include contact information for your background screening provider in case your applicant has any reason to question the background screening results.

Although the steps required by the FCRA can be cumbersome, the protection provided by this legislation is absolutely necessary. It not only protects your job applicants from denied employment based on inaccurate information, it also protects your organization from unnecessary litigation as a result of non-compliance. All background screening providers should be well-prepared for questions regarding the FCRA and be able to provide your organization with the tools needed to maintain compliance.

*Please note: The above steps only reflect the Federal law surrounding background checks. For information regarding various state laws or to obtain additional information regarding the FCRA, please consult with your legal counsel or contact your background screening provider.*